



**4334-12**

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 2**

[156D0102DM/ DS10700000/ DMSN00000.000000/ DX.10701.CEN00000]

**RIN 1090-AB10**

**Privacy Act Regulations**

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior is proposing to amend its regulations to exempt certain records in the Indian Arts and Crafts Board system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

**DATES:** Submit written comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send written comments, identified by RIN number 1090-AB10, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street N.W., Mail Stop 5547 MIB, Washington, D.C. 20240.

- Email: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, *Privacy@ios.doi.gov*.

**FOR FURTHER INFORMATION CONTACT:** Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street N.W., Mail Stop 5547 MIB, Washington, D.C. 20240. E-mail at *Privacy@ios.doi.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to records about individuals that are maintained in a “system of records.” A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(k).

The Department of the Interior (DOI), Office of the Secretary, created the Indian Arts and Crafts Board, DOI-24, system of records to assist the Department of the Interior’s Indian Arts and Crafts Board (IACB) in overseeing the implementation of the

Indian Arts and Crafts Act of 1990, as amended. The purposes of this system of records include documenting investigations, including investigations by DOI law enforcement, of individuals or organizations that offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization within the United States. Additionally, the system helps the IACB manage its program activities, promote the economic development of American Indians and Alaska Natives of Federally recognized tribes through the expansion of the Indian arts and crafts market; provide promotional opportunities, general business advice, and information on the Indian Arts and Crafts Act to Native American artists, craftspeople, businesses, museums, and cultural centers of Federally recognized tribes; manage museum exhibitions and activities; and produce a source directory of American Indian and Alaska Native owned and operated arts and crafts businesses.

In this notice of proposed rulemaking, the Department of the Interior is proposing to exempt the Indian Arts and Crafts Board system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) because of criminal, civil, and administrative law enforcement requirements.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is “investigatory material compiled for law enforcement purposes

Because this system of records contains investigatory material compiled for law enforcement purposes within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Interior proposes to exempt the Indian Arts and Crafts Board system of records from

the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1),(e)(4)(G) through (e)(4)(I), and (f). Where a release would not interfere with or adversely affect law enforcement activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records required by the Privacy Act available upon request to the individual named in the record. Release of the accounting of disclosures could alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation; endanger the physical safety of confidential sources, witnesses and their families; and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to investigatory records in the Indian Arts and Crafts Board system of records could inform the subject of an investigation of the existence of that investigation, the nature and scope of the information and evidence obtained, the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to

such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose security-sensitive, or confidential information and could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is often only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot always be readily segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it could aid in establishing patterns of criminal activity and provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. To the extent this provision is construed to require more detailed disclosure than the broad, generic information currently published in the systems of records notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, and to protect the privacy and physical safety of witnesses and informants.

## **Procedural Requirements**

### **1. Regulatory Planning and Review (E.O. 12866).**

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it does not meet the criteria for a significant regulatory action. The results of our evaluation are given below.

(a) This rule will not have an annual effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues.

## **2. Regulatory Flexibility Act.**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

## **3. Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

## **4. Unfunded Mandates Reform Act.**

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

## **5. Takings (E.O. 12630).**

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

## **6. Federalism (E.O. 13132).**

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

## **7. Civil Justice Reform (E.O. 12988).**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

## **8. Consultation with Indian Tribes (E.O. 13175).**

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian tribes.



## **9. Paperwork Reduction Act.**

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

## **10. National Environmental Policy Act.**

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969.

## **11. Data Quality Act**

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

## **12. Effects on Energy Supply (E.O. 13211).**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

## **13. Clarity of this Regulation.**

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

## List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts,  
Freedom of Information Act, Privacy Act.

**Dated:** \_\_April 15, 2015\_\_\_\_\_

**Signed:**\_\_\_\_\_

Kristen J. Sarri

Principal Deputy Assistant Secretary for Policy, Management and Budget

For the reasons stated in the preamble, the Department of the Interior proposes to  
amend 43 CFR part 2 as follows:

### **PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY**

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Amend § 2.254 by adding paragraph (b)(17) to read as follows:

§ 2.254 Exemptions.

\* \* \* \* \*

(b) \* \* \*

(17) Indian Arts and Crafts Board, DOI-24.

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